

STATE OF MICHIGAN
COURT OF APPEALS

CHEBOYGAN COUNTY ROAD
COMMISSION and ELLIS TOWNSHIP,

UNPUBLISHED
September 30, 1997

Plaintiffs/Counter-Defendants/Appellants,

v

ELDEN R. CRAWFORD
and DONALD LANNING,

No. 185583
Cheboygan Circuit Court
LC No. 94-003935-CH

Defendants/Counter-Plaintiffs/Appellees.

Before: Reilly, P.J., and MacKenzie and B. K. Zahra*, JJ.

PER CURIAM.

This case involves an unimproved right-of-way known as the Shooks Road extension, which runs through defendants' property. Plaintiffs brought this action to enjoin defendants from obstructing public use of the extension, and defendants counterclaimed to quiet title. Following a bench trial, the trial court ruled that plaintiffs abandoned the Shooks Road extension and entered a judgment in favor of defendants. Plaintiffs appeal as of right. We affirm.

The basic facts are not in dispute. Shooks Road is a gravel road that runs east and west. The improved part of Shooks Road ceases a few hundred feet east of its intersection with Afton Road, which runs north and south. Defendants, who are half-brothers, are the owners of two hundred acres of land, some or all of which lies east of Afton Road, where the improved portion of Shooks Road dead-ends. At one time, Shooks Road extended easterly through defendants' property and into the land adjoining defendants' eastern borderline. The adjoining land is a state forest known as the Pigeon River Country State Forest. It is that extension, connecting the improved portion of Shooks Road and Afton Road to the state forest, that is at issue in this case.

* Circuit judge, sitting on the Court of Appeals by assignment.

The county took jurisdiction of both the improved portion of Shooks Road and the subject extension in the 1930s under the McNitt Act, MCL 247.1; MSA 9.141. At that time, it was used for travel by horse or horse-and-buggy and was lined, at least in part, with fence posts. By 1951, the county no longer certified it as part of its county road system, and hence stopped receiving tax dollars for its upkeep.

Defendants' land, through which the extension runs, has been in their family for generations and at present their ownership is subject to a life estate held by their uncle, Homer Shook. Testimony at trial indicated that the land has been used for farming hay, as a cow pasture, and as a pheasant hunting club. From an unspecified point in time until at least the mid-1970s, it was fenced to prevent cattle from straying. This fence blocked passage from the improved portion of Shooks Road to the Shooks Road extension. When the land was leased to the pheasant hunting club, the proprietor removed the remaining fence posts that once lined the extension and cordoned off the entire parcel. The area became overgrown with brush and trees. Several witnesses remarked that by 1970, the extension was barely a two-track, and more like a footpath or trail. For the last ten years, a trailer has been located across the extension. All witnesses agreed that the condition of the extension is such that at the present time a car could not be driven on it. Photographic exhibits confirm that the right-of-way has reverted to its natural state. A videotape shows that the property has again been fenced off, blocking entry to the extension.

The record suggests that the trailer blocking the extension came to the attention of township and county authorities as a result of a dispute between Homer Shook and a neighboring family. It appears that Homer's father had allowed friends and neighbors to use the land, including the extension, to gain easy and direct access to the adjoining state land. Several witnesses testified that, as friends and neighbors of the Shooks, they would walk along the extension in order to get to the state forest to hunt or look for mushrooms. Others testified that they crossed the land on snowmobile to get to the forest. A few others testified that they rode motorcycles or off-road vehicles all around the area. When Homer took possession of the property, he told some of these individuals that he did not want them walking across his land. One witness in particular indicated his concern that Homer was preventing him from enjoying the same direct access to the state forest hunting area the witness had enjoyed for years before.

Two elements are necessary for there to be an abandonment of land dedicated to public use: (1) an intention to relinquish the property, and (2) some act or circumstances showing an intention to relinquish the property. *Roebuck v Mecosta Co Rd Comm*, 59 Mich App 128, 132; 229 NW2d 343 (1975), quoting *State Highway Comm v Twp of St Joseph*, 48 Mich App 230, 237; 210 NW2d 251 (1973). We find that both of these elements have been satisfied and conclude that the county has abandoned the Shooks Road extension.

Plaintiffs argue that the record does not include evidence of an act showing a clear intent to abandon on the part of the county. We disagree. In 1951, the county road commission elected, for whatever reason, to remove the extension from the certified roster of county roads. There is no evidence that this removal of the road from the county system was rejected by the county board of

supervisors. See MCL 224.20; MSA 9.120. The “decertification” of the extension had very specific and very serious consequences: “it shall not be lawful” for a road commission to spend money on the maintenance of an uncertified road without the consent of the board of supervisors. *Id.* In decertifying the road, therefore, the county effectively proclaimed that it no longer assumed the duty to maintain the road in reasonable repair. We view such a proclamation as the equivalent of relinquishing all control or rights to the road – the essence of abandonment.

The county’s conduct in the ensuing forty-four years is consistent with this abandonment. The road has not been maintained and, as the trial court found, has been allowed to revert to its natural state. It seems reasonable to assume that if the county did not intend to relinquish ownership, it would have taken measures to keep the road fit for travel by automobile, if only to avoid liability. Furthermore, until 1988, the right-of-way was susceptible to adverse possession by the Shooks. See *Gorte v Dep’t of Transportation*, 202 Mich App 161, 165-167; 507; NW2d 797 (1993). Although the Shooks family had blocked access to the extension with a fence and used the right-of-way as pasturage and hunting grounds, there is nothing to suggest that the county took steps to stop this use of the land to prevent adverse possession. This is consistent with the county’s understanding that the Shooks, not the county, had control of the extension. Finally, and perhaps of most importance, the minutes of road commission meetings show that it did not recognize the extension as a county road and specifically declined to entertain a motion to recognize the right-of-way as part of the county road system. The minutes also show that the township in which the extension is partly situated considered the road closed to the public. All these circumstances show more than a mere intent to abandon. Instead they show that the county opted to remove the road from the county system in 1951 and acted consistently with that decision over the ensuing five decades by eschewing any responsibility for maintenance or repair, allowing the Shooks to close off the extension to the general public, and publicly stating the understanding that the extension was not under the county’s jurisdiction. By absolutely relinquishing all control of the extension, the county abandoned it long ago.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Brian K. Zahra